

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ANASTASIOS (TOMMY)	:	CIVIL NO. 1:08-CV-00539
KALOMIRIS,	:	
Plaintiff	:	(Judge Conner)
	:	
v.	:	(Magistrate Judge Smyser)
	:	
THE MONROE COUNTY SYNDICATE,	:	
<i>et al.</i> ,	:	
	:	
Defendants	:	

REPORT AND RECOMMENDATION

The plaintiff commenced this action by filing a complaint on March 24, 2008.

By a Memorandum and Order dated January 8, 2009, Judge Conner dismissed all of the claims contained in the complaint. However, Judge Conner dismissed some of the claims without prejudice to the plaintiff filing an amended complaint. The Order of January 8, 2009 provided that the plaintiff shall be permitted to file an amended complaint on or before February 23, 2009 for purposes of pleading a malicious prosecution claim upon which relief can be granted against defendant Cuvo and for purposes of pleading a conspiracy claim upon which relief can

be granted against defendants Cuvo, Dodson, Knapp, Wentzel, Koehler, Laudenslager, Salter, Knitter, Costenbaden and Warden. The Order of January 8, 2009 also quashed service of the summons and complaint upon defendants Cuvo and Dodson, provided that, on or before February 23, 2009, the plaintiff shall effectuate service upon defendants Cuvo and Dodson in a manner consistent with Fed.R.Civ.P. 4, and provided that failure to effect service may result in dismissal of the claims against these defendants. Further, the Order of January 8, 2009 provided that, on or before February 6, 2009, the plaintiff shall show cause why the claims against defendants Charles Hazen and Jodi Hazen should not be dismissed for failure to effect service and that the claims against these defendants will be dismissed absent a showing of good cause.

By an Order dated January 9, 2009, the case was referred to the undersigned magistrate judge for full pre-trial management.

By an Order dated March 13, 2009, we granted the plaintiff an extension of time until April 30, 2009 to comply with the Order of January 8, 2009.

On April 24, 2009, the plaintiff filed an amended complaint.

The plaintiff has not shown cause why the claims against defendants Charles and Jodi Hazen should not be dismissed for failure to effect service. The plaintiff did file a document entitled certificate of service on April 28, 2009. However, in this document the plaintiff appears to indicate that the amended complaint was served by first class mail on Charles and Jodi Hazen. Service by first class mail does not comply with Fed.R.Civ.P. 4. Accordingly, it will be recommended that the claims against Charles and Jodi Hazen be dismissed.

By the Order of January 8, 2009, Judge Conner dismissed all claims against defendants Judge Debby York, Judge Michael Muth, Judge Linda Wallach Miller, Elmer Christine, Jr., Esquire, Mark Matthews, Esquire and Christopher O'Donnell, Esquire. Judge Conner denied the plaintiff leave to amend with regard to these defendants because amendment would be futile. Nevertheless, the amended complaint continues to contain claims against these defendants. It will be recommended that the claims against these defendants be dismissed.

Based on the foregoing, it is recommended that the claims in the amended complaint against Charles and Jodi Hazen be dismissed because the plaintiff failed to show good cause why he has failed to properly serve these defendants. It is also recommended that the claims in the amended complaint against defendants York, Muth, Wallach Miller, Christine, Matthews, and O'Donnell be dismissed because the claims against these defendants were previously dismissed without leave to amend. It is further recommended that the case be remanded to the undersigned for further proceedings.¹

/s/ J. Andrew Smyser

J. Andrew Smyser
Magistrate Judge

Dated: May 5, 2009.

1. Several of the other defendants named in the amended complaint have filed motions to dismiss the amended complaint. We will address those motions by a separate Report and Recommendation in due course after all such motions to dismiss have been fully briefed.